

Judge Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALLA SOBOL, a/k/a ALLA PYATETSKAY,

Defendant.

NO. CR-09-0084-MJP

GOVERNMENT'S
SENTENCING MEMORANDUM
RE: ALLA SOBOL

[Hearing Date: December 4, 2009]

I. INTRODUCTION

Defendant Alla Sobol comes before the Court having pled guilty to conspiring to commit bank fraud, mail fraud, and wire fraud in violation of Title 18, United States Code, Section 371. Defendant Sobol's five co-conspirators, Vladislav Baydovskiy, Viktor Kobzar, Camie Byron, David Sobol and Sandra Thorpe all entered guilty pleas to the same charge. A seventh defendant, Donata Baydovskiy, entered a guilty plea to making a false statement in a matter occurring before the Department of Housing and Urban Development. The false statement was made during the course of the charged conspiracy.

The charged conspiracy arose from a scheme to defraud lending institutions into making mortgage secured purchase money and refinance loans. An additional aspect of the scheme included defrauding otherwise unqualified prospective borrowers to secure purchase money loans based on false and fraudulent representations. The defendants profited from the scheme by charging excessive fees and diverting some of the fraudulently obtained loan

1 proceeds to themselves. The scheme succeeded in large part due to the defendants'
2 ownership and operation of both a mortgage loan brokerage business (Kobay and
3 Nationwide) and an escrow operation (Emerald City Escrow). Defendant Alla Sobol's role
4 in the charged scheme included operating Nationwide under her mortgage brokers license
5 and participating in efforts to form and operate Emerald City Escrow under the managerial
6 supervision of her husband and co-defendant, David Sobol. In addition, her participation
7 included preparing and submitting false documentation for purchase money loans used to
8 acquire properties in her own name.

9 II. FACTUAL BACKGROUND

10 The facts and circumstances underlying the offense conduct for which Ms. Sobol pled
11 guilty are summarized in the Plea Agreement and Presentence Report. (See Plea Agreement,
12 pp. 6-9; P.S.R. ¶¶ 14-34). The first section of the agreed statement in the Plea Agreement is
13 repeated below for the court's convenience.

14 Kobay Financial Corporation (Kobay) was a Washington State corporation established
15 by defendants Vladislav Baydovskiy and Viktor Kobzar on or about September 15, 2000.
16 Kobay was engaged in the business of originating mortgage loans, and packaging and
17 submitting loan applications and related documents for funding to lenders.

18 Nationwide Home Lending, LLC (Nationwide) was a Washington State limited
19 liability company established by defendant Vladislav Baydovskiy on or about November 8,
20 2005. Nationwide was also engaged in the business of originating mortgage loans, and
21 packaging and submitting loan applications and related documents for funding to lenders.
22 The Defendant was substituted as owner of Nationwide in September 2006. Nationwide
23 commenced operations in January 2007. The Defendant began personally originating
24 mortgage loans and packaging loan applications under Nationwide's business name in
25 February 2007. Nationwide ceased conducting business operations in October 2008.

26 Emerald City Escrow, LLC (Emerald City) was a Washington State limited liability
27 company established by defendants David Sobol and Donata Baydovskiy, and an un-named
28 individual, on or about September 15, 2005. Emerald City was engaged in the business of

1 acting as an intermediary to facilitate the purchase and sale of real property. Emerald City,
2 through the actions of its employees and principals, prepared, obtained and delivered written
3 instruments, money, evidence of title, and other things of value to complete or close real
4 property transactions.

5 The Defendant was a director, officer and managing member of Nationwide. The
6 Defendant was also a registered mortgage broker in the State of Washington. Beginning in
7 early 2007, Defendant and her co-conspirators began using the Nationwide entity to conduct
8 their mortgage brokerage business operations.

9 During the period of the Defendant's ownership of Nationwide, in the Western
10 District of Washington and elsewhere, the Defendant and her co-conspirators willfully and
11 knowingly conspired, combined, confederated and agreed among themselves, and with other
12 persons, to defraud financial institutions by, among other things: (a) locating residential real
13 properties that were available for purchase and recruiting straw buyers to participate in
14 purchasing the properties; (b) falsely inflating the value of the properties, and (c) submitting
15 false and fraudulent mortgage loan applications, title documentation, and related documents
16 to financial institutions, thereby causing lenders to make loans.

17 It was part of the conspiracy that the Defendant or her co-conspirators located
18 residential properties available for purchase and recruited individuals to act as buyers of the
19 located properties. These individuals, otherwise known as "straw buyers," would allow their
20 identities and credit to be used by the Defendant or her co-conspirators to purchase the
21 properties. In most cases, the straw buyers had no intention of permanently owning or
22 occupying the properties. In many cases, the Defendant or her co-conspirators paid straw
23 buyers for participating in purchasing selected properties and told straw buyers that they
24 would pay for expenses associated with ownership, including mortgage payments, property
25 taxes, and utilities during their titular ownership of the property.

26 The Defendant or her co-conspirators would prepare, or cause others to prepare, a
27 Uniform Residential Loan Application ("Loan Application") to facilitate the scheme to
28 defraud. The Loan Application, commonly referred to as a mortgage loan application, or

1 Form 1003, is a universally used mortgage loan application developed by federal government
2 agencies and utilized by financial institutions and other lenders in the mortgage loan approval
3 process. The Loan Application requires prospective borrowers to submit a complete and
4 accurate financial history, including employment information, monthly income, assets and
5 liabilities, details of the residential real estate transaction, and whether the property will be
6 used as the borrower's primary residence. The Defendant and her co-conspirators, and others
7 acting on their behalf, caused the Loan Applications for the straw buyers to be prepared.
8 Some of these Loan Applications contained fraudulent representations related to gross
9 monthly income, employment status, assets and liabilities, and whether the property would be
10 used as the primary residence. The Defendant and her co-conspirators then submitted, or
11 caused to be submitted, the false and fraudulent Loan Applications, together with the false
12 and fraudulent supporting documentation related to income, assets, liabilities, employment
13 status, and tax information to prospective lenders to secure mortgage backed financing.
14 Some of the lenders were financial institutions as defined in Title 18, United States Code,
15 Section 20.

16 Using escrow services provided by Emerald City Escrow, the Defendant or her co-
17 conspirators created, and caused others to create, false HUD-1 Settlement Statements.
18 HUD-1 Statements are standard forms used to facilitate the closing of residential real estate
19 purchase and sale transactions. They are used to identify and allocate expenditures and
20 payments associated with the transaction. Lending institutions rely on the accuracy of
21 HUD-1 Statements to ensure loan proceeds are applied appropriately to protect the lender's
22 security interest in the purchased property.

23 The Defendant or her co-conspirators, and others acting under their direction,
24 prepared and submitted false HUD-1 Statements to lending institutions. False and fraudulent
25 HUD-1 Statements were used to conceal the underlying purchase and sale transaction in
26 which the negotiated sale price was often less than that represented on the falsified
27 Statement. The Defendant or her co-conspirators prepared multiple HUD-1 Statements in an
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1 effort to conceal from purchasers and lenders the true nature of expenditures and payments
2 associated with the purchase and sale transaction.

3 The Defendant or her co-conspirators used false and fraudulent HUD-1 Statements to
4 facilitate the diversion of a significant portion of the loan proceeds from escrow accounts for
5 their personal benefit. In some cases, a portion of the diverted loan proceeds were used to
6 make payments on fraudulently obtained loans to delay defaulting on the obligation and
7 facilitate further fraud by using the acquired property for subsequent fraudulent transactions.

8 **III. ADVISORY GUIDELINE CALCULATION**

9 The parties' plea agreement does not include an agreed advisory guideline calculation.
10 Based on the offense characteristics, the government contends the following calculation is
11 accurate:

12	a.	A base offense level of six (6), pursuant to USSG § 2B1.1.(a)(2)	6
13	b.	An eighteen (18) level increase pursuant to USSG § 2B1.1.(b)(1)(D) because a reasonable estimation of the actual losses sustained by 14 the victims of the mortgage fraud scheme was more than \$2.5 million but not more than \$7.0	18
15	c.	A two (2) level increase pursuant to USSG § 2B1.1.(b)(2)(A) because 16 the offense involved 10 or more victims.....	2
17	d.	A two (2) level increase pursuant to USSG § 2B1.1 (b)(9) because the offense otherwise involved sophisticated means.....	2
18	e.	A four (4) level increase pursuant to USSG § 3B1.1.(a) because the 19 defendant was an organizer or leader of the scheme to defraud	4
20	e.	Acceptance of Responsibility	[3]
21		TOTAL ADJUSTED OFFENSE LEVEL	29

22 This proposed calculation differs from that offered by the Probation Office. According to the
23 Probation Office, the two level enhancement pursuant to USSG § 2B1.1.(b)(9) is not
24 applicable because the scheme perpetrated by Defendant Sobol and her co-conspirators did
25 not otherwise involve sophisticated means.

26 The resulting advisory guideline range, based on the total adjusted offense level of 29
27 would be 87 to 108 months applying a criminal history category of I. The five year statutory
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1 maximum sentence under the charged and agreed violation of 18 U.S.C. § 371 effectively
2 caps the advisory guideline range at 60 months.

3 **A. A Reasonable Estimate Of The Loss For Guidelines Purposes Is More**
4 **Than \$2.5 Million But Not More Than \$7.0 Million**

5 The government and counsel for defendants Camie Byron and David Sobol have
6 stipulated that the government can establish an estimated loss amount attributable to the
7 admitted fraud for purposes of calculating the applicable offense level of between \$2.5
8 million and \$7.0 million. It is anticipated that counsel for defendant Alla Sobol will join in
9 that stipulation. The stipulation was sought in the interest of avoiding a potentially
10 protracted evidentiary hearing for the limited purpose of establishing a reasonable estimate of
11 the loss.¹ Recognizing that the court must make its own loss determination, the government
12 offers the following legal points.

13 Absent the stipulation, the government anticipates that the defendants will each
14 contest the loss amount as preliminarily calculated by the Probation Office and the
15 government. While the government readily concedes that establishing a precise loss amount
16 may be problematic, such precision is not required. *See, e.g. United States v. Showalter*, 596
17 F.3d 1150, 1161 (9th Cir. 2009)(“a district court has a number of permissible methods for
18 determining monetary loss, and ‘need not make its loss calculation with absolute precision.’”) *cit-
19 ing United States v. Zolp*, 479 F.3d 715, 719; *United States v. Garro*, 517 F.3d 1163, 1167
20 (9th Cir. 2008)(“loss need not be determined with precision, but need only be a reasonable
21 estimate...given the available information); *United States v. Miller*, 188 F.3d 1312, 1317 (per
22 curiam) (11th Cir. 1999) (explaining that courts may reasonably estimate the amount of loss
23 because “often the amount of loss caused by fraud is difficult to determine accurately.”). As
24 discussed below, the government’s proffered loss amount attributable to the charged and
25 admitted scheme is a reasonable estimate supported by reliable and sufficient evidence.

26 ¹ The stipulation specifically provides that it shall not apply to the judicial determination of
27 restitution in this case. The parties are free to advocate for any amount of restitution, wholly independent
28 of the stipulated loss range. In addition, evidentiary submittals offered to substantiate the agreed loss
estimate for guidelines purposes are not to be cited to the court for purposes of challenging any proffered
claim for restitution.

1. The Government's Proposed Methodology Is Consistent With The Guidelines And Ninth Circuit Authority

U.S.S.G. § 2B1.1(b)(1) provides for an increase in the base offense level based on the amount of the loss. Application Note 3(A) defines loss as "the greater of actual loss or intended loss that resulted from the offense." "'Actual loss' means the reasonably foreseeable pecuniary harm that resulted from the offense." Application Note 3(A)(I). "'Intended loss' . . . means the pecuniary harm that was intended to result from the offense . . . and . . . includes intended pecuniary harm that would have been impossible or unlikely to occur" Application Note 3(A)(ii).

As to determining the loss, "[t]he court need only make a reasonable estimate of the loss." Application Note 3(C). *See also United States v. Lutz*, 154 F.3d 581, 590 (6th Cir. 1998) ("In determining the loss for sentencing purposes, a district court need only make a reasonable estimate of the loss, and this court reviews for clear error and reverses the valuation only if it is outside the realm of permissible computations.") (citation omitted).²

In the case of collateral pledged or provided by the defendant, a credit must be applied based on the fair market value or disposition amount of the collateral at the time of sentencing. Application Note 3(E)(ii). Notably, this basis for reducing the amount of the loss turns on the defendant's own efforts or own collateral, not the efforts or collateral of a third party.

Courts have approved a common methodology for assessing a reasonable estimation of loss in cases with mortgage fraud schemes employing practices similar to those used in this case. This methodology properly holds the mortgage fraudster responsible for the loan money received as a result of the fraud, but appropriately deducts from the loss amount the fair market value of the collateral, as suggested by Application Note 3(E)(ii) to U.S.S.G.

² It is important to note that the loss calculations necessary to determine restitution under § 3663, and the loss determination necessary for guidelines purposes under USSG § 2B1.1 are distinct. The purpose of restitution is restorative, to compensate the victims of the offense conduct for harm caused by the defendants.

§2B1.1. This is the methodology recommended by the government and employed by the Presentence Report to determine actual loss.

Subtracting the value of collateral at the time of sentencing from the mortgage loan proceeds to determine actual loss to lenders was employed the Eighth Circuit in *United States v. Parish*, 565 F.3d 528 (8th Cir. 2009) in determining loss for sentencing purposes.

According to the court in *Parish*:

Pursuant to U.S.S.G. § 2B1.1, the equation used to calculate actual loss to the lenders is the amount of the fraudulently obtained mortgage loans minus any payments made on the loan principal and the value of the collateral at the time of sentencing. *See* U.S.S.G. § 2B1.1 app. n. 3 (E)(I) and (E)(ii). The government submitted evidence to the district court that the defendants fraudulently obtained 195 mortgage loans from twenty-four separate lending institutions, resulting in defendants receiving approximately \$85 million in loan proceeds. Therefore, we take the amount of the loan proceeds-\$85,020,128-and subtract the value of the 195 homes built by PMDC and used as collateral.

Id. at 535. The government in *Parish* provided the district court with a comparative analysis of the market value of comparable homes to those built by the defendant. This value was multiplied by the number of properties for which fraudulent loans had been obtained to determine an approximate value of the collateral at the time of sentencing.

The First Circuit recently endorsed this approach of “first determin[ing] the total amount of the loan issued for each of the flipped properties, and subtract[ing] from that number the considerably lower amount the land-flippers paid for the piece of property in question . . . [so that the] latter quantity serve[s] as a proxy for the true amount of the security the lender held on the property.” *United States v. Innarelli*, 524 F.3d 286, 290-91 (1st Cir. 2008), *cert. denied*, 129 S.Ct 350 (2008).

The Ninth Circuit in *United States v. Allen*, 88 F.3d 765 (1996) presented useful guidance for this court to follow in determining a reasonable estimation of loss. Citing decisions from other circuits, the court in *Allen* held that “actual loss” must take into account the amount recovered or reasonably anticipated to be recovered from collateral that secured the loan, and loan payments made prior to default. *Id.* at 770 citing *United States v. Rothberg*, 954 F.2d 217, 219 (4th Cir. 1992) *United States v. Baum*, 974 F.2d 496, 499 (4th Cir. 1992); *United States v. Smith*, 951 F.2d at 1167-68.

1 The district court in *Allen* found the minimum loss to be \$70,255.75. Based on the
 2 record below, the court determined that this figure was derived from testimony finding the
 3 gross loan value totaled \$170,412.68; the proceeds realized from repossession and resale of
 4 properties equaled \$100,156.93; and the loan payments made prior to default totaled
 5 \$54,989.15. Finding that the district court properly subtracted the resale proceeds from the
 6 gross loan value, the court affirmed the loss determination of \$70,255.75.

7 The defendant in *Allen* argued that the district court should also have subtracted the
 8 \$54,989.15 of loan payments made prior to default when calculating the actual loss, thereby
 9 reducing the actual loss to \$15,266.60. Denying this argument, the court noted that the loan
 10 payments had been credited by the bank towards interest, not principal. Citing decisions
 11 from other circuits approving of the inclusion of accrued interest as part of the actual loss
 12 calculation, the court in *Allen* noted that the district court was not asked to include accrued
 13 interest as part of the actual loss calculation. 88 F.3d at 771, citing *United States v. Gilberg*,
 14 75 F.3d 15, 19 (1st Cir. 1996)(accrued interest included in the loss calculation under §
 15 2F1.1); *United States v. Henderson*, 19 F.3d 917, 928 (5th Cir.)(same), *cert. denied*, 130 L.
 16 Ed. 2d 137, 115 S. Ct. 207 (1994); *United States v. Jones*, 933 F.2d 353, 354-55 (6th Cir.
 17 1991)(same); *United States v. Allender*, 62 F.3d 909, 917 (7th Cir. 1995)(same), *cert. denied*,
 18 133 L. Ed. 2d 732, 116 S. Ct. 781 (1996); *United States v. Lowder*, 5 F.3d 467, 471 (10th Cir.
 19 1993)(same); *contra United States v. Hoyle*, 33 F.3d 415, 419 (4th Cir. 1994)(loss calculation
 20 under § 2F1.1 should not include accrued interest), *cert. denied*, 130 L. Ed. 2d 892, 115 S.
 21 Ct. 949 (1995). The court found that had the district court included the accrued interest, then
 22 interest payments made prior to default would have been taken into account. See U.S.S.G. §
 23 2F1.1 comment. (n.7(b)) ("the loss is the amount of the loan not repaid. . ."); *Rothberg*, 954
 24 F.2d at 219; *Baum*, 974 F.2d at 499; *Smith*, 951 F.2d at 1167-68. The district court in *Allen*
 25 used only the loan principal to calculate the "amount of the loan"; it did not consider the
 26 accrued interest. Using this approach, payments made towards interest could not be
 27 considered as repayments made on the loan. The court affirmed the district court's exclusion
 28 of the \$ 54,989.15 in interest payments from the loss calculation.

1 Similarly, the court in *Allen* affirmed the district court's refusal to consider the interest
 2 proceeds from the non-defaulting loans. The defendant argued that the court should have
 3 considered the interest income from these loans claiming it was inconsistent to aggregate
 4 losses from defaulting loans and ignore gains from non-defaulting loans. The court affirmed
 5 the district court's rejection of this argument. Finding the calculations consistent, the court
 6 noted that the district court did not include as part of the loss the interest income the bank lost
 7 as a result of default, and therefore did not set off against the loss the interest income
 8 received from non-defaulting loans. Contrary to defendant's argument, the court found it was
 9 the lost interest income associated with the defaulting loans, not the amount of the unpaid
 10 principal, that is the counterpart of the interest income derived from the non-defaulting loans.
 11 The interest income lost on the defaulting loans was not included. Therefore, interest income
 12 from the non-defaulting loans should not have been included either.

13 Finally, in a determination applicable to this case, the court in *Allen* ruled that the
 14 district court also correctly refused to include payments made on current outstanding loans.
 15 For these loans, the risk of default on the then current loans was offset by the current and
 16 prospective amount of income to be collected. Recognizing the difficulty of accurately
 17 estimating the default risk and factoring it into the loss calculation, the court concluded that
 18 any prospective income should not be considered. 88 F.3d at 771, citing *Smith*, 951 F.2d at
 19 1169 and *United States v. Hughes*, 775 F. Supp. 348, 351 (E.D. Cal. 1991). Finding that the
 20 district court's determination that future losses and profits were too speculative to consider
 21 was not clearly erroneous, the court in *Allen* concluded that it was inappropriate to consider
 22 the loan payments made on the outstanding current loans. *Id.*

23 In summary, the guideline application notes, as applied by the courts, advocate
 24 applying the following methodology to the loss determination in this case:

- 25 - Aggregate the gross loan value of all loans procured by the defendants during
 26 the pendency of the charged scheme provided the identified loans were
 27 obtained using one or more fraudulent representations;
 28

- Deduct the gross loan value of all loans for which the lender or loan servicing company is not currently reporting a loss or the borrower is not in default;
- Deduct the fair market value of the pledged collateral (measured at or about the time of sentencing) from the aggregate value of all fraudulently obtained loans that were either foreclosed or are presently in default status; and
- Do not include as part of the loss the interest income the lender lost as a result of default and do not set off against the loss the interest income received from non-defaulting loans.

2. There Is Sufficient and Reliable Information To Support A Reasonable Loss Estimation Of More Than \$2.5 Million But Less Than \$7.0 Million

The government offers the attached Declaration of James C. Vach as evidence supportive of a reasonable loss estimation of more than \$2.5 million but likely less than \$7.0 million attributable to the charged and admitted mortgage fraud scheme. As noted in the Declaration, Mr. Vach is a Consumer Fraud Analyst employed by the United States Postal Inspection Service. He has actively contributed to the government's investigation and prosecution of this mortgage fraud scheme. One of the tasks he undertook was to contact all of the lenders identified by the government as extending one of seventy-three (73) loans known to have been obtained using fraudulent representations. The fraudulently obtained loans were listed in a document entitled "Fraud Book." The Book, a copy of which is attached to the Declaration as Exhibit A, formed the basis of the charged scheme and was provided in discovery to all the defendants.

Mr. Vach's declaration details his efforts to identify the current lender or loan servicing company for each of the identified loans. Vach Dec. at ¶ 4. Each identified lender or servicing company was asked to provide current information regarding the loan status. For those loans identified as being in default status, the lender or servicing company was asked to provide the current fair market value of the property. Applying the methodology discussed in the preceding section, Mr. Vach assembled the requested information in a second document entitled "Losses from Lenders." The loss document, a copy of which is

1 attached to the Declaration as Exhibit B, was provided to all of the defendants. In addition,
 2 all of the defendants were given copies of documentation received from the lenders and
 3 servicing companies to substantiate the losses. The government is unaware of any similar
 4 efforts being undertaken by the defendants, either collectively or individually.

5 As candidly admitted above, the government's proffered loss estimate is not precise.
 6 The guidelines and applicable case law do not, however, require precision. They merely
 7 require a reasonable estimation.

8 **B. The Scheme To Defraud Was Devised And Implemented Using**
 9 **Sophisticated Means**

10 The government disagrees with the Probation Office's decision not to apply the two
 11 level enhancement authorized by U.S.S.G. §2B1.1(b)(9) for offenses otherwise involving
 12 sophisticated means. Application Note 8(C) to Section 2B1.1 states that "'sophisticated
 13 means' means especially complex or especially intricate offense conduct pertaining to the
 14 execution or concealment of an offense."

15 Numerous courts have affirmed the district court's application of this enhancement in
 16 the context of similar mortgage fraud schemes. *United States v. Septon*, 557 F.3d 934,
 17 935-36, 937 (8th Cir. 2009) (defendant directed his employees to submit fraudulent
 18 documents to lenders concealing the fact that defendant was providing bridge loans to buyers
 19 for their down payments; that defendant used his businesses to act as sham employers for
 20 borrowers in order to falsely verify and the nature and sources of income; that loan
 21 applications falsely inflated borrowers' assets and income; and contained false tax returns,
 22 pay stubs, gift letters, bank statements, and bank notes); *United States v. Dinnall*, 2009 WL
 23 405365 (11th Cir. 2009) (unpublished) (defendant created and submitted to lenders
 24 fraudulent employment and earnings statements in eleven loan applications for borrowers,
 25 including fraudulent forms to verify employment, W-2 statements, payroll stubs, bank
 26 account statements, and other information, and who listed the phone numbers of friends and
 27 relatives on the employment records and recruited those individuals to verify the false
 28 information); *United States v. Wright*, 496 F.3d 371, 377-78 (5th Cir. 2007) (defendant used

his own funds to purchase cashier's checks for closing costs in the names of the loan applicants, made copies of the same checks which were forwarded to the lenders, then deposited the same cashier's checks into his account); *United States v. Small*, 210 Fed. Appx. 776 (10th Cir. 2006) (unpublished) (defendant employed shell corporations, false financial statements and fictitious persons); *United States v. Edelmann*, 458 F.3d 791, 815-16 (8th Cir. 2006) (defendant created numerous false documents, including multiple years of tax returns, supporting documents, such as W-2 and 1099 forms, bank statements, articles of incorporation, profit and loss statements, and bank letters); *United States v. Amico*, 416 F.3d 163, 169 (2nd Cir. 2005) (defendant used false bank documents; the solicitation and creation of false appraisals; the creation of false blueprints; submission of false blueprints to town officials in order to inflate the assessment of home values; collusion with the attorney representing many of the purchasers at closing); *United States v. Moncrief*, 133 Fed. Appx. 924 (5th Cir. 2004)(unpublished), certiorari granted, judgment vacated by *Moncrief v. United States*, 544 U.S. 1029 (2005) (sophisticated means was employed in mortgage fraud scheme).

As outlined above in the excerpted agreed factual statement, Defendant Sobol and her co-defendants employed many, if not most, of the means relied upon by courts in the above cited decisions to support application of the sophisticated means enhancement. Ms. Sobol herself created and oversaw the creation of false tax documents, bank statements, verifications of employment (some of which included the creation of fictitious businesses), loan applications, and verifications of assets. Those false documents were then used by her co-defendants to secure loans. The fraudulently obtained loans were closed at an escrow company operated by other participants in the scheme. Operation of the escrow company facilitated control over the closing process, preventing lenders from discovering the fraud. This concealment was essential to the success of the scheme. It permitted the fraud to continue unabated for over two years.

C. The Scheme To Defraud Involved Ten (10) Or More Victims

Both the government and the Probation Office contend the two (2) level enhancement authorized by USSG §2B1.1.(b)(2)(A) is applicable because the charged and agreed scheme

1 involved ten (10) or more victims. As noted in the Declaration of James C. Vach, filed
2 contemporaneously with this memorandum, the government identified twelve lenders who
3 extended loans on the basis of false and fraudulent information submitted by those
4 participating in the scheme. Vach Declaration at ¶ 3. Information recently developed to
5 assist the court in establishing a reasonable estimate of the losses attributable to the fraud
6 scheme identified ten (10) lenders or servicing companies reporting losses from loans
7 extended on the basis of false and fraudulent information. Vach Declaration at ¶ 5.

8 **D. Defendant Alla Sobol Was Both A Leader And An Organizer Of The Scheme**

9 Ms. Sobol seeks to avoid the four level enhancement based on her role as both an
10 organizer and leader of the scheme by suggesting, in part, that her participation was shorter in
11 duration than that of co-defendants Vladislav Baydovskiy and Viktor Kobzar. While it is
12 true that Messrs. Baydovskiy and Kobzar operated the scheme under the Kobay name
13 without Ms. Sobol's participation for several years, her decision to acquire a mortgage
14 brokers license and then operate Nationwide under that license was critical to the success of
15 the scheme. Nationwide could not have conducted business with a valid license. Messrs.
16 Baydovskiy and Kobzar could not acquire the required license due to regulatory issues
17 concerning past deceptive practices.

18 Ms. Sobol was not ignorant of her partners past business practices. Despite this
19 knowledge, or possibly because of it, she elected to both join in operating the mortgage
20 brokerage business and participate in the formation and operation of Emerald City Escrow.
21 As an experienced professional in mortgage lending business, Ms. Sobol was well aware of
22 the benefit of having a captive escrow company to facilitate the scheme. She participated in
23 discussions with Vladislav Baydovskiy that led to the decision to have her husband and co-
24 defendant, David Sobol, assume the managerial duties for Emerald City Escrow. It is very
25 unlikely that he would have undertaken those duties without her direction.

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IV. RECOMMENDATION & JUSTIFICATION

A. Criminal Fine, Restitution, Supervised Release

The government believes that Ms. Sobol lacks the necessary resources to pay both a criminal fine and the mandatory restitution obligation to be sought by the government. Consequently, the government will not oppose a request that the fine be waived.

The charged conduct to which Ms. Sobol pled guilty involved offenses “committed by fraud or deceit,” imposing a mandatory restitution obligation. 18 U.S.C. §3663A(c)(1)(A)(ii). Section 3663A(d) of the Mandatory Victim Restitution Act provides that “[a]n order of restitution under [the Act] shall be issued and enforced in accordance with section 3664. 18 U.S.C. § 3663A(d). Determining the appropriate restitution amount in this case presents some legal and factual issues requiring supplemental briefing and testimony. This court has scheduled a joint restitution hearing for January 29, 2010.

Finally, the government concurs with the Probation Office’s recommendation to impose a three year term of supervision. Three years of oversight is necessary to reduce the likelihood of recidivism.

B. Term of Imprisonment

In consideration of the following factors set forth in 18 U.S.C. § 3553(a), together with an advisory guideline range capped by the statutory maximum of sixty (60) months as advocated by the government, the government recommends that this Court sentence Defendant Sobol to forty-eight (48) months of imprisonment.

1. The Nature and Circumstances of the Offense

Unfortunately, the mortgage fraud scheme perpetrated by Defendant Sobol and her co-conspirators in this case was not unique. Prosecutors nationwide are investigating and have charged numerous schemes involving the same, or similar, deceptive acts. http://www.fbi.gov/publications/fraud/mortgage_fraud08.htm. The tremendous scale of the problem has led many to label mortgage fraud as a significant contributor to our nation’s financial problems. Fraud perpetrated by those involved in the mortgage lending industry has caused massive losses to lenders and is responsible for the failure of banks and private

1 lending institutions. Investors in mortgage backed securities have lost funds needed for
2 income and retirement. Home values have been distorted by inflated appraisals leading to a
3 shortage of affordable housing. Foreclosures caused by mortgage fraud have riddled
4 neighborhoods with abandoned houses and properties in disrepair.

5 A consistent sustained increase in home values led to relaxed loan underwriting
6 standards. Loan applications, appraisals, and real estate closing documents were not closely
7 scrutinized because the residential real estate industry assumed the rising real estate values
8 would insure that lenders would recoup their funds from the sale of the home if they had to
9 foreclose. In addition, it was assumed that homeowners unable to afford their mortgage
10 payments would simply re-finance based on the ever increasing value of their homes.

11 Several professionals in the residential real estate industry, including Defendant Sobol
12 and her co-defendants in this case, seized on opportunities presented by these market
13 conditions. They took advantage of the decreased scrutiny and a rising market by
14 orchestrating real estate transactions using fraudulently inflated prices, falsified borrower
15 qualification documents, and sham closings to divert loan proceeds to themselves. Lenders
16 were left with both unqualified borrowers lacking the resources to honor their loan
17 commitment, and overvalued properties to securitize the debt. The well documented collapse
18 of the residential real estate market exposed the fraud. Lenders could no longer look solely
19 to the pledged properties to recover their losses.

20 The government anticipates that one or more of the defendants will seek to rely on the
21 decreased scrutiny in the residential real estate lending markets as a mitigating factor for their
22 own conduct. Any suggestion that this Court should discount a particular defendant's
23 personal responsibility for preparing and submitting fraudulent documents and making false
24 representations in an orchestrated effort to obtain loan proceeds should be summarily denied.

25 There is no basis in the law or equity for the proposition that criminal conduct be
26 excused because the victim failed to take adequate measures to protect themselves or their
27 property. The relaxed underwriting standards employed by lenders prior to collapse of the
28

1 residential real estate market were neither an invitation to commit fraud nor an excuse for
2 those unscrupulous enough to steal.

3 The particular scheme charged and admitted to by Ms. Sobol, while not unique in its
4 methodology, required the collaborative efforts of mortgage brokers, loan officers,
5 accountants, and escrow closers. Each played a vital role in developing, implementing and
6 perpetuating the scheme. Any one of the scheme participants could have withdrawn and
7 reported the illegal activity.

8 **2. History and Characteristics of the Defendant**

9 Ms. Sobol had several years of experience in the mortgage lending business before
10 joining co-defendants Kobzar and Baydovskiy at Nationwide. She applied that experience to
11 further the scheme, drawing others into the effort to mislead lenders into making loans based
12 on false and fraudulent representations.

13 As noted in the parties' Plea Agreement, Ms. Sobol agreed to cooperate fully in the
14 government's investigation of the charged scheme. She has fully honored that commitment
15 by providing several interviews during which she provided information related to the
16 activities of her co-defendants as well as others in the mortgage industry. The information
17 has been very useful based in part on her extensive history in the industry.

18 The government also acknowledges Ms. Sobol's timely decision to enter into a plea
19 agreement. She was the first defendant to admit to the charged conduct and her decision,
20 together with corresponding commitment to cooperate, likely contributed to her co-
21 defendants subsequent decisions to reach similar agreements.

22 **3. Reflect Seriousness of Offense, Promote Respect for the Law, and 23 Provide Just Punishment**

24 As noted in sub-section 1 above, the mortgage fraud scheme perpetrated by Ms. Sobol
25 and her co-conspirators was largely successful due to relaxed oversight by lenders. Lenders
26 relied, to their detriment, on the truthfulness of representations made by Ms. Sobol and her
27 co-conspirators regarding a borrower's purported qualifications and the value of the
28 properties to be pledged as security for the fraudulently obtained loans. Motivated by simple

1 | greed and the perceived reduced risk of detection, Ms. Sobol and her colleagues were
 2 | undeterred by ethical constraints to make true and accurate representations regarding
 3 | property values and a prospective borrower's creditworthiness.

4 | The recommended forty eight (48) month term of imprisonment would go a long way
 5 | toward signaling to the entire real estate industry the seriousness with which fraudulent
 6 | practices will be sanctioned. The standards of honesty and transparency so readily abused
 7 | and ignored by the defendants in this case would best be served by significant terms of
 8 | imprisonment. Judicial recognition that dishonest business practices will not be excused
 9 | regardless of "market conditions" would be underscored by imposing the requested sentence.

10 | **4. Afford Adequate Deterrence to Criminal Conduct**

11 | The government has every reason to believe that this prosecution, together with a
 12 | custodial sentence of the requested duration, would deter Ms. Sobol from engaging in further
 13 | criminal conduct. An equally important consideration, however, is the deterrent effect this
 14 | prosecution and the resulting sentences will have on the broader real estate and mortgage
 15 | lending industries. As discussed above, countless others employed in the mortgage lending
 16 | industry profited from using many of the same fraudulent practices prosecuted in this case.³

17 | These professionals presumably engaged in a risk analysis, concluding that the threat
 18 | of detection and accountability was outweighed by the loan proceeds so readily stolen from
 19 | lenders and unwitting borrowers. The significant terms of imprisonment sought by the
 20 | government for all of the defendants in this case would signal to others in the industry an
 21 | increased risk to engaging in similar fraudulent conduct, tipping the balance in favor of
 22 | honest and transparent business dealings.

26 | ³The Mortgage Asset Research Institute's March 2009 report to the Mortgage Bankers
 27 | Association reports that "fraud incidence is at an all-time high," and "[e]merging fraud trends are
 28 | further draining lender, law enforcement, and consumer resources in the industry's most
 challenging times." <http://www.marisolutions.com/resources-news/press-release-20090316.asp>
 There were 63,713 mortgage fraud related suspicious activity reports filed with FinCEN in fiscal
 year 2008, compared to 17,127 such reports in fiscal year 2004 --an increase of 370%.

1 **5. Avoid Unwarranted Sentence Disparity Among Defendants**

2 Ms. Sobol was one of the three principals of Nationwide; she and her fellow
3 principals, co-defendants Baydovskiy and Kobzar, were the experienced leaders of the
4 scheme. Her participation, however, was distinguishable from that of Messrs. Baydovskiy
5 and Kobzar. The distinction warrants a lesser sentence than either of her fellow principals.

6 One of the fraudulent practices employed by the scheme included recruiting otherwise
7 unqualified borrowers to purchase “investment” properties. False documents were prepared
8 and submitted to lenders to secure purchase money loans. A significant portion of the loan
9 proceeds were diverted to the co-defendants without the knowledge of the borrowers, leaving
10 the borrower with less proceeds and an overvalued property. Based on the government’s
11 investigation, Ms. Sobol did not actively engage in this aspect of the fraud scheme.

12 In addition, the government concurs with her claim that she voluntarily withdrew from
13 the scheme in late 2008. It was a decision not shared by Messrs. Baydovskiy or Kobzar who
14 continued to submit fraudulent loan applications well into 2009. The government has not
15 formulated a sentencing recommendation for defendants Vladislav Baydovskiy and Viktor
16 Kobzar.

17 **C. Conclusion**

18 The mortgage fraud scheme perpetrated by Ms. Sobol and her co-defendants took
19 advantage of market conditions that enabled those motivated by dishonest intentions to reap
20 significant benefits with very little risk of detection. Fueled by greed, without any apparent
21 regard for ethical business dealings, Ms. Sobol and her co-defendants were undeterred in
22 their collective pursuit for fraudulent loans. It was not until the near collapse of the real
23 estate markets and the corresponding tightening of lending standards that the defendants’
24 activities were slowed. The sentences this court will impose on Ms. Sobol and her co-
25 defendants provide an opportunity to send the message that mortgage fraud, not unlike any
26 other fraud, will be sanctioned as serious criminal conduct. The government’s recommended
27 sentences accomplish this objective.
28

1 DATED this 30th day of November, 2009

2
3 Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 30, 2009 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorneys of record for the defendants.

/s/ Kimberly King
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